

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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RICHARD WILSON,

Plaintiff,

v.

Civil Action No.  
9:08-cv-509 (GLS/DRH)

KING, Sergeant, Upstate Correctional  
Facility; JOHN DOE #1, Correction Officer,  
Upstate Correctional Facility; JOHN DOE #2,  
Correction Officer, Upstate Correctional  
Facility; E. WEISSMAN, Dr., Upstate  
Correctional Facility; ELLIS, Dr., Upstate  
Correctional Facility; TICHENOR, P.A.,  
Upstate Correctional Facility; and TRAVERS,  
Nurse, Upstate Correctional Facility,

Defendants.<sup>1</sup>

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APPEARANCES:

OF COUNSEL:

**FOR THE PLAINTIFF:**

RICHARD WILSON  
Plaintiff, *Pro Se*  
97-B-2800  
Willard Drug Treatment Center  
Post Office Box 303  
7116 County Route 132  
Willard, New York 14588

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<sup>1</sup> Defendant corrections officers John Does 1 and 2 have neither appeared nor been served. Fed. R. Civ. P. 4(m) requires that a complaint be served upon a defendant within 120 days after the complaint is filed or the complaint may be dismissed as to any unserved defendant without prejudice. See also N.D.N.Y.L.R. 4.1(b). The complaint here was filed on May 9, 2008. Compl. No summons were served upon these defendants. More than 120 days have passed since the complaint was filed.

**FOR THE DEFENDANT:**

HON. ANDREW M. CUOMO  
Attorney General of the  
State of New York  
The Capitol  
Albany, New York 12224-0341

DEAN J. HIGGINS, ESQ.  
Assistant Attorney General

GARY L. SHARPE,  
U.S. DISTRICT JUDGE

**ORDER**

The above-captioned matter comes to this court following an Amended Report-Recommendation by Magistrate Judge David R. Homer, duly filed August 23, 2010. Following ten days from the service thereof, the Clerk has sent the file, including any and all objections filed by the parties herein.

No objections having been filed, and the court having reviewed the Magistrate Judge's Amended Report-Recommendation for clear error, it is hereby

ORDERED, that the Amended Report-Recommendation of Magistrate Judge David R. Homer filed August 23, 2010 (Dkt. No. 44) is ACCEPTED in its entirety for the reasons state therein, and it is further

ORDERED, that Defendants' motion for summary judgment (Dkt. No.

31) is DENIED as to Wilson's claim that Tichenor refused and delayed treatment for Wilson's ruptured spleen in violation of Wilson's Eighth Amendment rights and GRANTED as to all other claims against Tichenor; and it is further

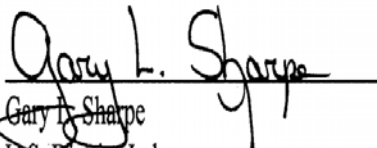
ORDERED, that Defendant's motion for summary judgment (Dkt. No. 31) is GRANTED as to King, Dr. Weissman, and Travers as to all claims against them; and it is further

ORDERED, that the complaint is DISMISSED without prejudice as to defendants John Doe #1 and John Doe #2; and it is further

ORDERED, that the Clerk of the court serve a copy of this order upon the parties in accordance with this court's local rules.

IT IS SO ORDERED.

Dated: September 16, 2010  
Albany, New York

  
Gary L. Sharpe  
U.S. District Judge